

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicant's principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

[54 FR 1548, Jan. 13, 1989, as amended at 54 FR 42482, Oct. 17, 1989; 55 FR 137, Jan. 3, 1990; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996]

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be the applicable rate multiplied by the principal loan amount or the Line of Credit ceiling amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. No guarantee fee will be charged when financing is provided by a State Beginning Farmer program as described in § 1980.108 (e) of subpart B of this part.

(1) The fee will be paid to FmHA or its successor agency under Public Law 103-354 by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(2) Guarantee fee rates are specified in exhibit K of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 Office).

(b) *Substitution fee.* In the event FmHA or its successor agency under Public Law 103-354 agrees to issue a Loan Note Guarantee in substitution for a Form FmHA or its successor agency under Public Law 103-354 449-17, "Contract of Guarantee," issued under previous regulations (see § 1980.61(b)(2)) the lender will pay to FmHA or its successor agency under Public Law 103-354 at the time the substitution is made nonrefundable, one-time fee at the applicable rate multiplied by the current principal loan balance multiplied by the percent of guarantee. Guarantee fee rates are specified in exhibit K of

the FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office).

[56 FR 11503, Mar. 19, 1991, as amended at 58 FR 48291, Sept. 15, 1993]

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* (1) Guarantee fees for Downpayment FO loan applicants. When a guaranteed loan is made in conjunction with the Downpayment FO Loan program for beginning farmers or ranchers referenced in § 1943.14 of subpart A of part 1943 of this chapter, the lender may charge a loan origination and servicing fee for an amount not to exceed 1 percent of the loan amount for the life of the loan.

(2) All Other Program Guarantees. Under all programs except the Downpayment FO Loan program for beginning farmers or ranchers, the lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

(b) *Late payment charges.* Late payment charges will not be covered by the Loan Note Guarantee or Contract of Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine.* They are routinely made by the lender in all types of loan transactions.

(2) *Payments received.* Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the

§ 1980.23

Loan Note Guarantee or Contract of Guarantee is in effect.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 58 FR 48291, Sept. 15, 1993]

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan or line of credit made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit nor may an FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA or its successor agency under Public Law 103-354 may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

[50 FR 39884, Sept. 30, 1985]

§§ 1980.24—1980.39 [Reserved]

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA or its successor agency under Public Law 103-354 approval official. The determination will be based upon FmHA or its successor agency under Public Law 103-354's completion of the appropriate environmental review and Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," when required as set forth in subpart G of part 1940 of this chapter and other agency comments or other information available. If an EIS is necessary, applicants and

7 CFR Ch. XVIII (1-1-97 Edition)

lenders will be required to provide essential data for use in its preparation. FmHA or its successor agency under Public Law 103-354 State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA or its successor agency under Public Law 103-354 is responsible for assuring that the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and subpart G of part 1940 of this chapter are met.

[54 FR 42482, Oct. 17, 1989]

§ 1980.41 Equal opportunity and non-discrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with title V of Public Law 93-495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA or its successor agency under Public Law 103-354 will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract or because all or part of the applicant's income derives from any public assistance program or because the applicant in good faith, exercised any rights under the Consumer Protection Act. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

(b) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and non-discrimination forms and requirements are applicable to certain cases involving construction as indicated. The borrower is responsible for seeing that the requirements of paragraphs (b)(1) through (5) of this section are met.

(1) *Compliance reports.* No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until he has filed all of the compliance reports required of him under any previous contracts.